IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 136 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARBHAI NARANBHAI PATEL - Applicant

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR S C OZA for Applicant(s) : 1,
Mr. K.C. Shah, Ld. APP for Respondent(s) : 1,
MR AD SHAH with Ms. Archana R Acharya for Respondent No: 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 19/09/2005

ORAL JUDGMENT

Learned counsel for the petitioner requests leave to deleting section 482 of Cr.P.C. 1973 in the petition. Leave is granted.

1. Rule. Shri. K.C. Shah learned APP, and Shri. A.D. Shah, learned counsel for Respondent no.2 waives service of rule for Respondent No.1 and 2 respectively.

2. Heard learned counsels for the parties. The petitioner in this petition under Article 227 of the Constitution of India has challenged the order dated 14/12/2004 passed by learned Executive Magistrate in Case no.3 of 2004 under section 145 of Cr.P.C., as well as the order dated 3/2/2005 passed by the Sessions Court in Criminal Revision application No. 260 of 2004, wherein the present petitioner has challenged the order of learned Executive Magistrate dated 14-12-2004 under section 397 of Cr.P.C.

3. The facts in the petition thus be enumerated as under:

The petitioner has filed Civil Suit No. 144 of 2004 in the Court of Civil Judge (S.D.), Surat against original defendants No. 1 to 15 wherein the present respondent no.2 was not joined as party defendant at all. The suit was for declaration and permanent injunction in respect of subject suit land. The petitioner submits that the concerned Civil Court

appointed Commission which carried out the inspection on 9-3-2004. As per the report of the Commission the subject suit land was found to be an open land having three boards, in nature of public notice, stating that one Shri. Ishwarbhai Naranbhai Patel is the owner & occupier of the subject land. This Ishwarbhai Naranbhai Patel is the petitioner in the present Special Criminal Application. The boards of suit land was likely to create law & order problem, hence the Inspector of Pandesara Police Station, Surat lodged complaint being Police Complaint No. 1 of 2004 which came to be registered in the Court of Learned Magistrate as Case No. 3 of 2004 against the petitioner and one Ramavatar Sitaram Agrawal – Respondent no.2. As there was likelihood of breach of land & order, necessary order under section 145 of Cr.P.C. 1973 was required to be passed. Learned Magistrate has passed detailed order after holding necessary inquiry into the matter and perusing the documentary evidences adduced by both the sides. Learned Magistrate has recorded its finding that the land was in possession of Respondent no.2 and therefore, the authority should see that no untoward incident shall occur for the possession of the land, pending the civil proceedings being Regular Civil Suit

No. 144 of 2004. This order of learned Magistrate dated 14-12-2004 was challenged by the petitioner in Criminal Revision Application No. 260 of 2004 wherein also the Sessions Court has observed in detail that the order of the learned Magistrate was not perverse so as to call for any interference. The Sessions Court has cogently narrated the evidences adduced by the parties on the record, and the findings recorded by learned Magistrate. He has concurred with the finding of the learned Magistrate.

4. Learned counsel Shri. Oza for the petitioner has submitted that both the orders being erroneous they deserve to be quashed and set aside. Learned counsel has submitted that the learned Magistrate ought to have appreciated the fact that the original land owners have filed affidavit in favour of present petitioner regarding possession of the land. Learned counsel has submitted that the factum of possession ought to have been held in favour of the petitioner, in view of the fact that the original land owners representative was present when the Court Commissioner had inspected the land and the commission report is eloquent in respect of the boards standing in the land.

5. Shri. A.D. Shah, learned counsel appearing for the Respondent no.2 has submitted that, this Court in a petition under Article 227 of the Constitution of India may not disturb the concurring findings of the two courts and this petition therefore deserves to be dismissed on this count alone. Shri. Shah has submitted that the learned Magistrate has rightly found that the land in question was in possession of respondent no.2 and therefore, no untoward incident shall occur resulting into breach of law & order. This order of learned Magistrate being correct & proper in law did not require any interference. Shri. Shah has submitted that the order of the Sessions Court passed in Criminal Revision application No. 260 of 2004 is correct and as the Sessions Court did not find the order of learned Magistrate perverse or erroneous, the revision has rightly been dismissed. In view of this, Shri. Shah submits that this Court also may not reverse the finding of the trial court and the revisional court in this Special Criminal Application filed under Article 227 of the Constitution of India.

6. This Court has heard learned counsels of the parties at length. The order of learned Magistrate dated

14/12/2004 does not seem to be erroneous in view of the fact that the learned Magistrate has applied its mind to the documentary evidences adduced before him by the parties. The order under section 145 of the Criminal Procedure Code passed by learned Magistrate does not seem to be suffering from any perversity as has been rightly held by the Sessions Court in Revision Application No. 260 of 2004. This Court sitting in a supervisory jurisdiction is not inclined to interfere with the findings recorded in the impugned orders by the learned Magistrate and the Sessions Court. The petitioner has failed in making out any case calling for interference by exercising extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India. It is needless to say that the orders made under section 145 of Cr.P.C., are made only with a view to maintain the law & order position in respect of the suit land. Orders under section 145 of Cr.P.C., are thus not amounting to adjudicating the title of the parties in respect of the suit land. The suit land is subject matter of Regular Civil Suit No. 144 of 2004 wherein the respondent no.2 has also now been impleaded as defendant no.16. In this view of the matter, in absence of any perversity resulting into

miscarriage of justice in the orders passed by both the lower courts, no interference is called for, and this petition deserves to be dismissed and is dismissed accordingly. Rule is discharged.

[S.R. BRAHMBHATT, J]

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